IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1536 OF 2005

The Textile Committee, a statuary committee formed under the Textile Committee Act, 1963 having its office at 406, Kakad Chambers, 132l Dr. A.B. Road, Worli, Mumbai 400 018. ... Petitioner

Versus

1. Shri. Saibaba Cotton Waste Spinning Mills, a proprietary concern of Shri Saibaba Cotton Mills Pvt. Ltd. having its address at 1, Co-op. Industrial Estate, Hatgi Road, Solapur 413 003.

2. The Textile Committee Cess Appellate Tribunal, a tribunal constituted under Section 5B of the Textile Committee Act, 1963 and having its office at Aayakar Bhavan, 2nd Floor, Room No. 236, M.K. Road, Mumbai 400 020.

3. Union of India, through the Secretary, Ministry of Textiles, Udyog Bhavan, New Delhi 110 011. ... Respondents

Mr. B.R. Palav with Ms. Radha J. Iyer i/by Amarchand & Mangaldas & S.A. Shroff & Co. for Petitioner.

Mr. Nitin Mule i/by G.S. Godbole for R. No. 1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: NOVEMBER 09, 2006
ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

. The Petitioner is a statutory body constituted under the provisions of the Textile Committee Act, 1963, which Legislation shall be referred to as the

"Act". A demand had been made on Respondent No. 1 for payment of cess leviable under the provisions of the said Act. The Respondent No. 1 aggrieved by the said assessment, preferred an appeal before the appellate authority constituted under the Act. The appellate authority by the impugned order dated 18.11.2004 relied on the notification dated 18.9.1978 issued by the Central Government in exercise of its powers under Section 5 of the Act and held that textile manufactured from waste cotton, no cess was payable. The Respondent in the instant case, produces yarn from the waste cotton. It is this order which is the subject matter of the present petition.

. We had expedited this order as counsel for the petitioner had informed the court that apart from this matter, there are 400 other matters pending before the appellate tribunal where similar issue has arisen.

. Counsel for Respondent No. 1 has raised a preliminary objection that by the impugned order of 18.11.2004, the appellate tribunal had disposed of several pending appeals whereas the Petitioner had filed only one petition. In answer to that on behalf of the Petitioners, they have restricted the petition to T.C.A. No. 7/96. With that

background, we may now dispose of the present petition.

2. On behalf of the Petitioner, it is submitted that they were not aware that the Petitioner was manufacturing textiles which were leviable to cess and it is only on or about 22.8.1995 that they learnt that the Respondent No. 1 was manufacturing textiles and not submitting returns. Under the Act, rules have been framed which are known as Textile Committee (Cess) Rules, 1975 which hereinafter shall be referred to as the "Rules". They are in force from 1.4.1975. In the instant case, the cess demanded is from the year 1986. It is submitted on behalf of the Petitioner by their learned counsel, that the notification relied upon by the appellate authority based on which they have passed their judgment would be inapplicable. It is submitted that at the highest, it is only waste cotton which will be exempted from the cess but not the textile prepared from the waste cotton. The learned tribunal in proceeding on the basis that the textile manufactured from the cotton waste is exempted, has clearly misdirected itself in law and consequently the order of the appellate tribunal, suffers from an error of law apparent on the face of the record and consequently requires to be set aside.

. On the other hand on behalf of the Respondent, their learned counsel firstly submits that the yarn (textile) manufactured by them from the waste cotton is not textile falling within the meaning of the definition textile, under sub section 2(g) of the Act and once that be the case, it is submitted that no cess is due and payable. In the alternative, it is submitted that the view taken by the Appellate Tribunal is a reasonable view and should not be interfered with. It is next submitted that the demand has to be to be within a reasonable period. The demand is made for the first time in the year 1996 claiming the cess from the year 1986. It is submitted that this cannot be a reasonable period. It is further submitted that it is not the case of the Petitioners that they were not aware that they were not manufacturing textiles. It is therefore, submitted that the reasonable period must be considered as similar to the period provided under the Indian Limitation Act in respect of which the recovery can be made and hence, the period as contained in the Limitation Act should be imported for the purpose of demand of cess if it is due and payable. Lastly it is submitted that the demand is based on the provisional assessment and in these circumstances, they should have an opportunity of showing cause and to that extent the matter ought to be remanded. The learned counsel has relied on

several judgments which will be adverted to in the course of our discussion.

3. To correctly appreciate and understand the issue and the controversy which has arisen, it will be necessary to refer to some of the provisions of the Act and the rules as framed thereunder :

Section 2(g) defines ‘textile’ as under :

> ""Textile" means any fabric or cloth or yarn or garment or any other article made wholly or in part of - (i) cotton, or (ii) wool, or (iii) silk, or (iv) artificial silk or other fibre, and includes fibre. "

. Under Section 5A of the Act, power is conferred on the Central Government to fix cess by notification. There is a proviso which provides that no such cess should be levied on textiles manufactured from out of handloom or powerloom industry.

. The next relevant provision is Section 5E, which confers power on the Central Government to exempt such variety of textiles or such textile machinery as may be specified in the notification from the whole or any part of the duty of excise leviable

under Section 5A. In exercise of such powers, the Central Government has issued notification dated 18.9.1978. We may reproduce the said notification :

> "THE GAZETTE OF INDIA, SEPTEMBER 30 1978 ASVINA 8, 1900. MINISTRY OF COMMERCE, CIVIL SUPPLIES AND COOPERATION.
>
> (Department of Commerce)
>
> New Delhi, the 18th Sept.78.
>
> G.S.R.192. In exercise of the powers conferred by Section 5 of the Textile Committee Act, 1963 (41 of 1963), the Central Government having decided that in the public interest it is necessary so to do hereby exempt, with effect from the date of publication of this notification, the following categories of textiles items from the payment of cess leviable under section 5 of the Act, namely :
>
> i) Rags and Chindies,
>
> ii) All types of waste of whatever description i.e. Yarn Waste, Hard Waste, Cotton Waste, Woolen Waste, Art-Silk Waste etc.

iii) Samples of textiles.

F.No.018(32)/75-CTEC/EP(TIJ-I)

Sd/-
(A.K. Sengupta)
Under Secretary"

. A duty is cast on every manufacturer under Rule 3 to maintain a register of production under which will be indicated the total quantity of textiles or textile machinery manufactured during a month, the quantity (if any) used for the manufacture of another commodity, the quantity removed on payment of duty under the Central Excise and Salt Act, 1944, the quantity removed for export without payment of such duty, the total value ad-valorem and the cess payable thereon at the rate for the time being in force.

. Rule 4 thus reads as under :

"Submission of monthly returns : (1) Every manufacturer shall furnish to the Committee in duplicate, a return in Form A or in Form B, as the case may be, for each

month duly signed by him or any other person authorised by him in this behalf so as to reach the Committee, not later than fifteen days after the expiry of the month to which the return relates, along with a certified copy of the returns submitted of the Central Excise authorities under rule 54 of the Central Excise Rules, 1944 for the relevant month.

(2) A return referred to in sub rule (1) shall be sent by registered post with acknowledgement due."

. The other relevant rule is Rule 8 which reads as under :

"Assessment when return is not furnished or furnished incorrectly etc : If any manufacturer fails to furnish the return referred to in rule 4 within the period specified therein, or furnishes a return which the Committee has reason to believe is incorrect or defective, the Assessing Officer may, after giving the manufacturer an opportunity of being heard, assess the amount of cess on the basis of figures obtained during the Central Excise

Department or on the basis of the average of the cess levied during the previous two quarters immediately preceding the quarters for which assessment is being made."

4. We may now consider the submission whether the textile manufactured from the cotton waste is not textile within the meaning of section 2(g) of the Act. We have earlier reproduced the definition of textile, which sets out that it is any fabric or cloth or yarn or garment or any other article made wholly or in part out of (i) cotton, or (ii) wool or (iii) silk or (iv) artificial silk or other fibre, and includes fibre. This definition of textiles includes not only the fabric or cloth but also yarn or garment or fibre. The argument which is advanced on behalf of the Petitioner is based on the notification which exempts all types of waste which includes cotton waste. If we peruse the power conferred under Section 5E, the power is to exempt textiles or textile machinery items. On a careful perusal of the notification, there is no difficulty in holding that Rags and chindies, as samples of textiles as also yarn waste would fall within the expression textile. The issue is in respect of the expression cotton waste and other waste of natural fibres as set out therein. The submission of the Petitioner is that if the textile is manufactured

from cotton waste, then that textile is exempted in terms of the notification dated 18.9.1978. We are afraid it is not possible to accept this submission. What is exempted is textile as set out therein. This textile includes rags and chindies and samples of textiles. The other textile exempted is yarn waste. A natural fibre like cotton or wool or silk does not fall within the expression of "textiles" and therefore, cannot be the subject matter of any notification under Section 5 of the Act though the definition uses the expression "includes fibre. Fibre has been defined under Section 2 (ba) to mean man-made fibre including regenerated cellulose rayon, nylon and the like. In other words, fibres other than fibres natural fall within the definition of "textile". Natural fibre is not ‘textile’. If cotton, wool or silk by itself could not be the subject matter of an exemption notification, as the power to exempt is to textiles and textile machinery, then cotton waste, woollen waste or silk waste could not be the subject matter of the notification unless they fell within the expression fibre which is included in the extended definition of textile is only man made fibre. At any rate, what is exempted is not the textile manufactured but the product mentioned in the notification. Once that be the case, the argument made on behalf of the Petitioners by the learned counsel that the textile

made from cotton waste is not textile has to be rejected. The expression textile comprehensively includes what is made from cotton, wool, silk or artificial or other fibre. Cotton which is treated as cotton waste does not undergo any chemical change from cotton it continues to be a natural fibre nor does it amount to manufacture, in other words, a product different from the original product. When the Legislature by an extended definition has included man made fibres in the definition of textile, it obviously excluded natural fibres used for making textile.

5. The learned tribunal has proceeded on the footing that some effect must be given to the notification of 18.11.1978. Otherwise, Clause (2) of the said notification would be meaningless. By that approach the Tribunal has misdirected itself in law. The notification exempts textiles and not what is made from the natural fibres as set out in Clause (2) of the said notification. As an illustration, yarn waste would not be subject to cess, but the textile produced from yarn waste will be subject to cess. If it is so read, only then can the notification achieve the object for which it was issued. As pointed out neither cotton nor cotton waste is exempt, though yarn waste, as yarn is

included in the definition of textile is exempted. In other words, the natural fibres do not form the subject matter of exemption. We are therefore, clearly of the opinion that the yarn manufactured by the Petitioners from waste cotton was liable to payment of cess. The judgment of the appellate tribunal on that count clearly discloses an error of law apparent on the face of the record and accordingly the judgment is liable to be set aside. Courts are not free to give a meaning because in their opinion, otherwise, a part of the notification may seem to be absurd. That exercise has to be done by the authority making the subordinate legislation. If we read the notification carefully, the object seems to be to exempt yarn waste of cotton, silk etc. from what is set out under item (ii) of the notification. That would be because 'yarn' is textile.

6. It is then submitted on behalf of the Respondents by their learned counsel that even if the cess was payable, the demand has to be made within a reasonable period and at any rate it cannot be for more than the period of three years from the date the notice was issued or the provisional assessment was made and served on the Petitioners. In the first instance, there is no provision providing for limitation for demanding payment of

cess. On the contrary, in terms of the rules, which we have reproduced earlier, a duty is cast on the manufacturer to maintain record and to file monthly returns. The assessment is based on the returns as filed. Rule 8 also indicates that if the returns are not filed, it is open to the Assessing Officer based on the figures obtained by the Central Excise department i.e. Sales Tax, which has been paid to work out the cess on that basis.

. On behalf of the Petitioners, their learned counsel has drawn our attention to the judgment of the Apex court in the matter of Franco B. Martins and another Vs. Mrs Mafaida Maria Teressa Rodrigues, AIR 1999 Supreme Court 3243. In that case, considering the provisions of the Consumer Protection Act and Limitation Act, the Apex Court was pleased to hold as under :

> "When the legislature, in its wisdom, thought it appropriate not to prescribe the period of limitation for proceedings under the Act, the Courts cannot apply the provisions by implication."

. On the other hand on behalf of the Respondents, their learned counsel has firstly relied on the judgment of the Supreme Court in State of Gujarat

Versus Patil Raghav Natha and Others, 1969(2) Supreme Court Case 187. The issue in that case was the exercise of powers of revision by the Commissioner under the provisions of the Bombay Land Revenue Code. There was no limitation provided. However, the Supreme Court considering the controversy was pleased to hold on the reading of provisions of Sections 63 and 211, that the Commissioner must exercise his revisional powers within a few months of the order of the Collector and this would be the reasonable time. In our respectful opinion, that is not in a matter of tax dues. Apart from that, the power was to be exercised suo motu by the Collector. The next judgment relied is the case of J.K. Kapur and Others Versus State of Gujarat and Others, (1974) 4 Supreme Court Cases 92. In that case, the assessee had filed his return. A reassessment was sought to be done. No limitation has been provided for the reassessment and it is in that context, the Supreme Court was pleased to bring in the concept of reasonable time for the purpose of reassessment. The court held that the reasonable time wold be one year. In the instant case, in fact rules have been prepared for reassessment and are covered by Rule 10 which provides for the period of one year. The last judgment relied upon was the case of Mohd. Kavi Mohamad Amin Versus Fatmabai Ibrahim (1997) 6

Supreme Court Cases 71. This was again the case of suo motu enquiry by the Mamlatdar under the provisions of B.T.A.L. Act, 1976. The Supreme Court observed that where no time limit is prescribed to exercise powers under the statute, it does not mean that it can be exercised at any time. Such power has to be exercised within reasonable time.

. No judgment has been brought to our attention in applying the doctrine of reasonable time in the matter of governmental dues like tax or cess. On the contrary the rules framed themselves would indicate that there can be no such limitation as the primary obligation is on the part of the manufacturer to maintain records and to submit monthly returns. To take a view that the Governmental dues are subject to a reasonable period, would be to help the dishonest tax evaders in getting benefit of their own act to evade tax either bonafide or deliberately. It is not possible for this court to construe a provision for payment of cess or tax by importing the principle of reasonable period. A conjoint reading of the rules (3), (4), (6) and (7) and (8) would clearly indicate that once the manufacturer is liable and has not filed returns, it is open to the Assessing Officer to make assessment in terms of Rule 8. In our

opinion, therefore, the question of reasonable period and or time cannot be imported in so far as payment of cess payable under the Act and rules. We must therefore, reject that contention as urged on behalf of the Petitioner.

7. The provisional assessment itself shows that the assessment is based upon the sales tax figures filed by the respondent themselves. The leaned counsel further submits that they had no opportunity to meet the said contention as they had preferred the appeal against the said provisional assessment. Be that as it may, in our opinion, this would not be a fit case where we ought to remand the matter. However, to resolve any dispute as to the question of payment, if any, it will be open to the petitioners to move under rule 9, if it is their contention, that the excess cess has been paid. For that purpose, the period of limitation will be treated as one year from the date of this judgment.

8. In the light of the above, rule is made absolute in terms of Prayer Clauses (a) and (b). We make it clear that it will be open to the Petitioners to challenge the other orders which are not the subject matter of the present petition, if in law they are so advised. No order as to costs.

. The learned counsel seeks stay of the order.There is no case made out for stay. Application for stay rejected.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**